THE MARTIN LAW FIRM
W3643 Judy Lane
Green Lake, Wisconsin 54941
Telephone: (920) 295-6032
Facsimile: (920) 295-6132
Cell Phone: (920) 229-6670
Licensed in Illinois

e-mail: martinlaw@charter.net

May 28, 2008

By Federal Express
Thomas C. Marks
Chief, Remedial Enforcement Services Section
United States Environmental Protection Agency
Mail Code SR-6J
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Re: American Nameplate Company
Chicago, Illinois

Dear Mr. Marks:

This letter is the response of the American Nameplate Company (the "Company") to your "Demand for reimbursement of costs expended investigating the Lake Calumet Cluster Site" (the "Demand") dated April 30, 2008.

In the Demand, U.S. EPA requires payment by the Company of all of the costs it incurred at the "Alburn Incinerator Site," a total of $1,835,184.06. The Company has no liability for any funds U.S. EPA expended at the Alburn Incinerator Site, however, and therefore declines to send payment, for the reasons stated below.

As you know, the Lake Calumet Cluster Site is not a single site; rather, it is an administrative amalgamation of four separate sites with separate ownerships and separate operational histories: (1) the Alburn Incinerator; (2) an Unnamed Parcel; (3) U.S. Drum II; and (4) Paxton Avenue Lagoons. Together, these are referred to as the "Lake Calumet Cluster Site" ("LCC"). U.S. EPA proposed LCC for the National Priorities List in 2005, but it has never been formally listed on the NPL.

According to U.S. EPA documents which the Company reviewed, the Company gave 13 drums to "U.S. Drum" for hauling on March 22, 1979. Their destination was selected by U.S. Drum and is unknown to the Company. Assuming these drums were disposed of at U.S. Drum II, this is the only potential connection the Company has to LCC.

The U.S. EPA costs for which you seek reimbursement are for the Alburn Incinerator, however, not for LCC. The Company has never dealt with Alburn, nor has it ever dealt with any of its

predecessors. The Company is not listed on the PRP list for the Alburn Incinerator. Thus, the Company has no connection to Alburn Incinerator site, can never be alleged to have arranged for disposal of any hazardous substances at that site and thus has no actual or potential liability for U.S. EPA costs there.

We also direct your attention to U.S. EPA documents regarding "American Name Plate & Metal Decorating Co." and also to the Company's letter dated July 7, 2004, to Jeffrey A. Cahn, Esq., of U.S. EPA. A copy of that letter should be in your files. Enclosed is a photocopy of the letter, without the 2 inches of attachments. (Please let me know if you cannot locate the letter with all attachments and I will resend them.) Note that no response was ever received to this letter from U.S. EPA.

We will not repeat the extensive discussion and documentation in that letter as to the Company's lack of liability, except to say that the Company did not even exist until after its incorporation on December 26, 1978. (Exhibit 1.) Shortly thereafter, on January 2, 1979, the Company acquired the assets of a company known as American Name Plate & Metal Decorating Co. Of the 243 drums hauled by U.S. Drum for this company, according to the U.S. EPA documents, only 13 drums were hauled after the Company came into existence.

Prior to the Company's incorporation, the company known as American Name Plate & Metal Decorating Co. was a wholly-owned subsidiary of Rochester Instrument Systems, Inc. This company is still in existence, according to the New York State Corporations Division. It is owned by The Marmon Group, Inc., which also is still in existence.

This is not the first time that recovery mistakenly has been sought from the Company by U.S. EPA or third parties for alleged disposals by American Name Plate & Metal Decorating Co. Rochester and/or Marmon has paid claims made against this company at three Superfund sites – Midco I, Midco II, and Ninth Avenue. But neither Marmon nor Rochester have any liability in the case of the Alburn Incinerator site, as all of the U.S. EPA documents reflect dealings only with U.S. Drum.

For the foregoing reasons, and for the further reasons stated in the July 7, 2004 letter, we respectfully decline to pay U.S. EPA's Alburn Incinerator costs. Please don't hesitate to contact me if you require further information.

Very truly yours,

Maureen Martin

cc: Jeffrey A. Cahn, Esq.
The Marmon Group
Susan M. Franzetti, Esq.
Mike Stevens

THE MARTIN LAW FIRM
W3643 Judy Lane
Green Lake, Wisconsin 54941
Telephone: (920) 295-6032
Facsimile: (920) 295-6132
Cell Phone: (920) 229-6670
Licensed in Illinois

e-mail: martinlaw@charter.net

July 7, 2004

Jeffrey A. Cahn, Esq.
Associate Regional Counsel
Multi-Media Branch II Section III
Office of the Regional Counsel
United States Environmental Protection Agency
Mail Code C-14J
77 West Jackson Boulevard
Chicago, Illinois 60604

Re: American Nameplate Company
Lake Calumet Cluster Superfund Site (the "Site")
Chicago, Illinois

Dear Jeff:

As you know, I represent American Nameplate Company (the "Company"), which received a General Notice of Potential Liability letter sent by the United States Environmental Protection Agency ("U.S. EPA") on December 6, 2003, in connection with the Site.

The purpose of this letter is two-fold. First, the Company provides herein the history of its predecessor which plainly documents that this predecessor is responsible for 95% of the drums allegedly disposed at the Site by so-called "American Nameplate." Second, because the Conpany's alleged contribution to the site is minimal, the Company respectfully requests that U.S. EPA enter into a *de minimis* settlement pursuant to which the Company makes a token contribution toward site remediation costs in return for receiving a covenant not to sue, and other suitable and customary considerations, from U.S. EPA.

Site Documents

Pursuant to our November 2003 Freedom of Information request, U.S. EPA provided the documents upon which the Agency relied in attributing potential liability to the Company. These documents reflect that U.S. Drum picked up drums from the "Old American Name Plate" plant at 4254 West Arthington, Chicago, Illinois, as follows:

February ?, 1976	16 drums
August 20, 1976	19 drums
April 23, 1976	31 drums
February 28, 1978	24 drums
March 1, 1978	10 acid drums

March 28, 1978	23 regular drums
	13 acid drums
April 1978	15 acid drums
June 30, 1978	57 drums
	4 acid drums
December 6, 1978	18 drums
March 22, 1979	13 drums
Total:	243 drums

The destination of these drums is not reflected in the documents. Nothing in these documents links the drums transported from Old American Name Plate to their disposal at the the U.S. Drum II portion of the Lake Calumet Cluster Site. Thus, the Company denies that it has any liability at this site.

For purposes of this letter, and specifically for the purpose of discussing a potential *de minimis* settlement, however, the Company assumes but does not concede that the referenced drums were disposed of at the site.

De Minimis Settlement

The Company was incorporated on December 26, 1978. (Exhibit 1.) Shortly thereafter, on January 2, 1979, the Company acquired the assets and certain identified liabilities, not including environmental liabilities, of a company then known as American Name Plate & Metal Decorating Co. (hereinafter, "Old American Name Plate"). (Exhibit 2.) It thus is plain from the dates of the drum disposal set out above that, but for 13 drums hauled on March 22, 1979, all of the disposal activities at issue here were engaged in by Old American Name Plate, not the Company.

At the time of this asset acquisition in 1979, and for many years prior to it, including the period 1976-79, Old American Name Plate was a wholly-owned subsidiary of Rochester Instrument Systems, Inc. ("Rochester Instrument"). (Exhibit 3 at p. 13 and Exhibit 4 at pp. 5, 17.) Shortly after this transaction, Old American Name Plate changed its name to ANP Liquidating Co. (Exhibit 2, ¶ 17 and Ex. 9 to Exhibit 2) and was dissolved in 1980. (Exhibit 16.) Its parent, Rochester Instrument, is still in existence today, however, as discussed below.

This is not the first time that recovery mistakenly has been sought from the Company by U.S. EPA or third parties for environmental conduct actually engaged in by Old American Name Plate. As discussed below, in four instances arising between 1985 and 1997, Rochester Instrument (and/or its parents) either defended and indemnified the Company against such claims or reimbursed it for such costs.

In all of these matters, as here, all wastes were alleged to have been shipped prior to January 2, 1979.

The Company therefore respectfully requests that U.S. EPA notify Rochester Instrument of its alleged liability and seek recovery of its proportionate share of Lake Calumet Cluster Site costs from it and/or its parents. Contact information is set forth below. As to the drums transported from

Arthington Street after the Company acquired the Old American Name Plate assets, the Company requests that U.S. EPA enter into a *de minimis* settlement with it with respect to the minimal quantity of drums allegedly involved at the above-referenced site.

Successor Liability

As mentioned above, the Company in 1979 acquired only certain assets of Old American Name Plate. It expressly stated that it was not assuming any liabilities except as specifically identified in the agreement. And the agreement expressly states that the Company did not assume liabilities arising out of the conduct of Old American Name Plate prior to the closing. (Exhibit 2, ¶ 4 and Ex. E to Exhibit 2.) Under well-established legal principles of successor liability, then, the Company is not legally responsible for the environmental liabilities of its predecessor.

In *North Shore Gas Co. v. Salomon Inc.,* 152 F.3d 642 (7th Cir. 1998), the Seventh Circuit set forth the general rule that an asset purchaser does not acquire the liabilities of the seller. *Id.* at 651. There are four exceptions to this rule:

> (1) the purchaser expressly or impliedly agrees to assume the liabilities; (2) the transaction is a de facto merger or consolidation; (3) the purchaser is a "mere continuation" of the seller; or (4) the transaction is an effort to fraudulently escape liability.

Id. The Company transaction here satisfies none of these exceptions.

The factual background of the Company's acquisition of Old American Name Plate is as follows. In 1978, Robert Madden was approached about the possible purchase of Old American Name Plate. (Exhibit 6.) Robert Madden, his brother, James Madden, and other investors ultimately formed a corporation called Neddam, Inc. (Madden spelled backwards), which was incorporated on December 26, 1978. (Exhibit 1.) The Madden family had no prior connection or association with Old American Name Plate. After the closing on January 2, 1979, Neddam changed its name to American Nameplate & Metal Decorating Co., which later became known as American Nameplate, defined hereinabove as the "Company." (Exhibit 6 at p. 000159-162.)

Under the asset purchase agreement, Neddam agreed to purchase only certain selected assets of Old American Name Plate. Those assets were equipment, rights under an automobile lease, a postage meter lease, a copying machine lease, a burglar alarm system lease, a security guard agreement, and sales representatives' agreements. (Exhibit 2 at Ex. 5 and Schedule A.)

The purchased assets expressly did not include other substantial assets, including cash on hand and on deposit; Old American Name Plate bank accounts; accounts receivable (including accounts receivable for goods shipped but not billed prior to the closing date); and any reserves of Old American Name Plate. Also excluded from the assets purchased was the Arthington Street plant. (Exhibit 2 at Ex. 5, ¶ (m) and Exhibit 11.)

Thus, the transaction was an asset purchase, and the Company has liability for Old American Name Plate's alleged disposal activities only if the transaction falls within one of the three exceptions set forth in *North Shore Gas.* [1]

The first exception does not apply because the Company did not expressly or impliedly assume environmental liabilities of Old American Name Plate. As stated above, under the Agreement, Neddam assumed only the expressly-specified liabilities relating to the operation of the business after the closing date. The Agreement provided that "Except as specifically set forth herein, Buyer shall not assume, pay for, perform or discharge any debts, liabilities or obligations of Seller, whether accrued, absolute, contingent or otherwise." Thus, the first *North Shore Gas* exception is inapplicable.

The second exception does not apply because the transaction was not a *de facto* merger or consolidation. In order to find that a *de facto* merger took place, there must be continuity of shareholders resulting from the purchaser paying for assets with its own stock. *North Shore, supra,* 152 Fed. 3d at 653 n.6. Here, however, Neddam paid $225,000 in cash for the purchased assets and signed a promissory note for $89,955.58. (Exhibit 2 at ¶¶ 2-3.) Thus, the second *North Shore Gas* exception is inapplicable.

Third, the Company is not a "mere continuation" of Old American Name Plate:

> The mere continuation exception allows recovery when the purchasing corporation is substantially the same as the selling corporation. *See* Fletcher, *Cyclopedia of the Law of Private Corporations* § 7124.10 (perm. ed. 1990). The exception therefore applies when "the purchasing corporation maintains the same or similar management and ownership but wears a 'new hat.'" *Id.* (footnote omitted). . . . Courts have identified a number of factors that suggest that the seller's corporate entity has continued on after the sale of assets. These factors include "an identity of officers, directors, and stock between the selling and purchasing corporations." Courts also consider whether only one corporation exists after the transfer of assets, and whether the purchaser paid adequate consideration for the assets.

North Shore, supra, 152 Fed. 3d at 654. Here, there was no common ownership of the two corporations, nor was there an identity of officers, directors and stockholders between the two corporations. Further, two corporations existed both before and after the transaction and there was adequate consideration paid by the Company. Thus, the Company was not a mere continuation of Old American Name Plate so that the third *North Shore Gas* exception is inapplicable.

Because none of the exceptions apply, the general rule governs and provides the conclusion that the Company did not assume the liabilities of Old American Name Plate.

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[1] There is no suggestion that the transaction was entered into fraudulently as an attempt by Neddam as a means by which Old American Name Plate could avoid liability.

Parent-Subsidiary Liability

As noted above, Rochester Instrument was the parent of Old American Name Plate during the period when 230 drums of liquid waste allegedly were disposed of at U.S. Drum II. Old American Name Plate was dissolved in 1980[2] but Rochester Instrument remains an active corporation today. (Exhibit 7.)

The analysis applicable to whether a parent is liable for the environmental obligations of its subsidiary was set forth in *United States v. Bestfoods*, 524 U.S. 51 (1998), in which the Supreme Court stated:

> While the parent has no liability for its subsidiary's obligations merely by ownership of the subsidiary's stock, the corporate veil may be pierced to impose derivative liability upon the parent when the parent so controls the subsidiary that it is the "mere agency or instrumentality of the owning company."

Id. at 62-63. The parent can also be held directly liable under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, if it acts as the "operator" of a facility. As the Supreme Court stated:

> The question [as to direct liability] is not whether the parent operates the subsidiary, but rather whether it operates the facility, and that operation is evidenced by participation in the activities of the facility, not the subsidiary. Control of the subsidiary, if extensive enough, gives rise to indirect liability under piercing doctrine, not direct liability under the statutory language." Oswald 269; see also *Schiavone v. Pearce, 79 F.3d 248, 254 (CA2 1996)* ("Any liabilities [the parent] may have as an *operator*, then, stem directly from its control over the plant").

Id. at 67-68. Although our research has disclosed no authoritative case imposing liability upon the parent company as a generator, the analysis logically should be no different. As discussed in the following section of this letter, under this reasoning, Rochester Instrument has both derivative (or indirect) and direct CERCLA liability for conduct engaged in by Old American Name Plate.

Indirect Liability – Piercing the Corporate Veil

The corporate veil should be pierced when the parent has abused or disregarded the corporate form of its subsidiary so that it has become a mere instrumentality of the parent. *Torco Oil Co. v. Innovative Therman Corp.*, 763 F. Supp. 1445, 1450 (N.D. Ill. 1991). This case states the general rule that:

> The party seeking to pierce the corporate veil must show *first* that there has been abuse of the corporate form such that one corporation has been made a "mere instrumentality" of the other . . . . as evidenced by such conduct as "(1) the failure to

[2] Old American Name Plate held itself out in 1985, however, as an active company. (Exhibit P.)

> maintain adequate corporate records or to comply with corporate formalities, (2) the commingling of funds or assets, (3) undercapitalization, and (4) one corporation treating the assets of another corporation as its own," and *second* that "adherence to the fiction of separate corporate existence would sanction a fraud or promote injustice."

Id. at 1450.

Rochester Instrument disregarded the corporate form of Old American Name Plate and treated Old American Name Plate as its mere instrumentality. Old American Name Plate was held out as a "division" of Rochester Instrument and as one of its "operating units" in the Information/Display Group. (Exhibit 3 at pp. 17-19; Exhibit 4 at p. 3.) Its day-to-day operations were under control of the Rochester Instrument Systems Group Vice President in charge of the I/D Group. (Exhibits 3 and 4.)

Rochester Instrument submitted financial reports for the U.S. Securities and Exchange Commission that consolidated Old American Name Plate financial information with that of Rochester Instrument. Rochester Instrument also prepared consolidated parent-subsidiary tax returns for the Internal Revenue Service. (Exhibits 3-4.)

Rochester Instrument treated the cash assets of Old American Name Plate as its own and Old American Name Plate's funds were commingled with Rochester Instrument's funds. (Exhibits 8 and 9.) Old American Name Plate never paid dividends to Rochester Instrument. (Exhibit 8.) Instead, funds of Old American Name Plate and Rochester Instrument were commingled in a joint bank account at First National Bank of Chicago. (Exhibits 8 and 9.) In the years in which Old American Name Plate was profitable, excess funds were swept from this account by Rochester Instrument as they became available. (Exhibits 8 and 9.) Old American Name Plate could not write checks in excess of $500 without the approval of Rochester Instrument Systems. (Exhibit 8.) Rochester Instrument Systems required its subsidiaries, including Old American Name Plate, to fund the operating costs of Rochester Instrument System's head office. (Exhibits 8 and 9.)

Furthermore, Old American Name Plate was inadequately capitalized. In 1975, Old American Name Plate lost $107,000, and, in 1976, Old American Name Plate lost $75,000. (Exhibit 6 at p. 12.) In 1975, Old American Name Plate's stated capital was $38,000, an amount clearly insufficient to satisfy its outstanding obligations. (Exhibit 10.) These losses thus were paid by Rochester Instrument.

In sum, Rochester Instrument ignored the separate corporate form of Old American Name Plate. It commingled Old American Name Plate's funds with its own and treated its subsidiary's funds as its own funds. And it undercapitalized Old American Name Plate. To require the Company to pay a share of Site remediation costs would come about only by the "adherence to the fiction of separate corporate existence." To do so "would sanction a fraud or promote injustice." Thus, Rochester Instrument is not entitled to shield itself behind corporate formalities. It is clear that indirect liability for the Old American Name Plate's disposal activities rests with Rochester Instrument under principles of parent-subsidiary veil piercing.

Direct Liability under CERCLA

As stated in *Bestfoods,* direct liability under CERCLA may be imposed upon a parent corporation as an operator if the parent "manage[s], direct[s], or conduct[s] operations specifically related to pollution, that is, operations having to do with the leakage or disposal of hazardous waste, or decisions about compliance with environmental regulations." *Bestfoods, supra,* 524 U.S. at 66-67. Application of this principle establishes that Rochester Instrument is liable for the disposal activities of Old American Name Plate at the Site.

Rochester Instrument was well aware of the disposal problems at Old American Name Plate. In 1978, Rochester Instrument retained a management consultant to evaluate envjronmental issues at Old American Name Plate. This consultant informed Rochester Instrument as follows:

> The disadvantages of the current [etch and dry] operation are (1) worker safety, (2) ventilation of fumes, (3) storage of acids, and (4) **disposal of spent acids and waste water.** Capital investment is required to upgrade the facility and to maintain compliance with OSHA and EPA standards. Acid mist in the air of the etch room is the most serious of the above conditions.

(Exhibit 6)(emphasis supplied). The consultant further noted:

> Heating problems, equipment break-downs, neighborhood break-ins, special security measures, sewage discharge, truck unloading problems, acid fumes, paint fumes, and naptha storage inconvenience [and fire hazard]. A general state of disrepair makes each day unpredictable and a constant challenge. It is likely that investments will be required to comply with changing OSHA and EPA regulations in the future.

This report was prepared in 1978, but it described conditions in the plant dating back at least to late 1975. (Exhibit 8.) The Company was profitable in 1977 and 1978, according to Mike Stevens, then its vice-president, but Rochester Instrument as a whole was not. *Id.* The Company's only checking account was maintained jointly with Rochester Instrument, and it was not unusual for Rochester Instrument to sweep cash out of it (once as much as $20,000) without notice to the Company. This was done so that Rochester Instrument could meet its own payroll or pay other expenses. *Id.* As noted above, expenditures of $500 or more could not be made without Rochester Instrument's approval.

Also during this time period, Rochester Instrument personnel would examine, often in day-long sessions, detailed listings of the Company's expenses, line-by-line to determine how to reduce them. Old American Name Plate was always under pressure to generate cash. (Exhibit 8.) A hauler other than U.S. Drum could not have been selected without Rochester Instrument's approval. *Id.*

The consultant estimated that approximately $38,600 would be required in repairs to render the plant in compliance with EPA and OSHA standards. (Exhibit 6.) These repairs were never made even though the total return to Rochester Instrument Systems from Old American Name Plate from

1971 through 1975 had been $241,000, and the Company was profitable in 1977 and 1978. (Exhibit 6 at p. 12.) Rather than make the necessary expenditures, Old American Name Plate was sold to Neddam.

Thus, it is clear that Rochester Instrument's conduct, via its detailed operation of Old American Name Plate and stringent controls on its spending, including spending for waste disposal, renders it liable for the disposal activity of Old American Name Plate.

Subsequent Corporate Activity

In 1978, TransUnion Corporation acquired Rochester Instrument Systems. (Exhibit 11.) TransUnion, which now concentrates in consumer and business credit data, was formed in 1968 as the parent of Union Tank Car Company, a railcar leasing operation. (Exhibit 12.) TransUnion acquired Rochester Instrument by paying for it in shares of TransUnion stock. (Exhibit 11.) The transaction was described by TransUnion as a "pooling of interests" (Exhibit 11), which is the equivalent of a *de facto* merger.[3] *In re Acushnet River & New Bedford Harbor Proceedings re Alleged PCB Pollution,* 712 F. Supp. 1010, 1018-19 (D.C. Mass. 1989), *affirmed in part and reversed in part on other grounds sub nom. by Lumbermens Mut. Casualty Co. v. Belleville Industries,* 938 F. 2d 1423 (1st Cir. 1991). (*See* Exhibit 11.) Thus, TransUnion acquired all of Rochester Instrument's environmental liabilities, which, as shown above, included the environmental liabilities of Old American Name Plate.

In 1980, TransUnion merged with The Marmon Group (Exhibits 12 and 13.) Marmon describes itself as "an association of more than 100 companies that operate independently within diverse business sectors." It was ranked in 2002 as 16th on the *Forbes* magazine list of the largest privately-held companies in the United States. *See* http://www.marmon.com/Profile.html. Marmon is owned by the Pritzker family, which also owns the Hyatt Hotel chain and the Royal Caribbean Cruise line. (Exhibit 13.)

On September 5, 2000, Ametek, a Philadelphia-based manufacturer of electronic instruments and motors, acquired the assets of Rochester Instrument. (Exhibit 14.) Rochester Instrument, now

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[3]CERCLA liability has been imposed under the *de facto merger* doctrine noted above as follows:

> Finally, the tax treatment of the transaction militates in favor of finding a *de facto* merger . . . . [S]ubsection (a)(1)(C) of section 368 provides that, under specified conditions, a stock-for-assets acquisition will be treated as a "reorganization." The purpose of this section of the statute is "to permit changes in corporate structure that are primarily changes in form similar to statutory mergers." *Pierson v. United States, 472 F. Supp. 957, 968 (D. Del. 1979)*(footnote omitted)(discussing the stock-for-stock provision of 368[a][1][B]), *rev'd on other grounds, Heverly v. Comm'r, 621 F.2d 1227 (3d Cir. 1980), cert. denied, 451 U.S. 1012, 68 L. Ed. 2d 865, 101 S. Ct. 2351 (1981).* Against this background, Aerovox's claim that it did not "intend" a merger rings hollow. In reality, it was a bargained for precondition of the sale that the financial world view the transaction as a mere "pooling of interests," and that the Internal Revenue Service view it as a simple change in corporate form.

In re Acushnet River & New Bedford Harbor Proceedings re Alleged PCB Pollution, 712 F. Supp. 1010, 1018-19 (D.C. Mass. 1989), *affirmed in part and reversed in part on other grounds sub nom. by Lumbermens Mut. Casualty Co. v. Belleville Industries,* 938 F. 2d 1423 (1st Cir. 1991).

known as Union Street Divestiture Corporation, is an active business corporation whose principal executive office is The Marmon Group, Inc. in Chicago. (Exhibit 7.)

Indemnification by TransUnion and Marmon

Midco I and II

On August 8, 1985, the Company notified TransUnion of Old American Name Plate's alleged liability in connection with the Midco I and II Superfund Sites in Indiana. (Exhibit 15.) By letter dated October 1, 1985, written on TransUnion letterhead, TransUnion attorney Arthur Hillman advised American Nameplate that, even though ANP Liquidating Co. had dissolved, TransUnion would assume the defense of American Nameplate in Midco I and II. (Exhibit 16.) Mr. Hillman stated that TransUnion was willing to do so because "it is clear from the Asset Purchase Agreement that Neddam, Inc. did not assume any liability for claims of third parties arising prior to January 2, 1979, and that such claims remained the responsibility of ANP Liquidating Co." *Id.*

By letter dated October 1, 1985, on ANP letterhead, Mr. Hillman advised the third-party plaintiffs seeking to recover from American Nameplate as follows:

> As we discussed over the telephone, it appears that the Third Party Plaintiffs in the captioned case have served the wrong "American Nameplate" Company . . . . Since Neddam, Inc. purchased the assets of American Nameplate & Metal Decorating Company and assumed only certain of the liabilities of the company, the liability for the Midco sites would rest with ANP Liquidating Co. On August 8, 1985, the new American Nameplate & Decorating Company made a demand on ANP Liquidating Co. to assume the defense of the Midco case, and ANP Liquidating Co. agreed to do so.

A small sum was apparently paid by ANP Liquidating in and around 1986. (Exhibit 17.) Six years later, on August 5, 1992, Ecodyne[4] paid the sum of $30,379 to the Midco Trust Fund by a check drawn on Ecodyne's general account and described as "Ecodyne as Indemnitor for American Nameplate." (Exhibit 18.) Also by letter dated August 5, 1992, signature pages for Midco were sent to Karaganis & White, counsel for the plaintiffs. The settlor was identified as "Ecodyne Corporation as Indemnitor for American Nameplate" and it was signed by Gerald T. Shannon, Vice President, Ecodyne Corporation, 225 East Washington, Chicago, Illinois 60606. (Exhibit 18.) As set forth below, The Marmon Group is also located at this address.

Ninth Avenue

In 1994, a lawsuit was filed in the U.S. District Court for the Northern District of Indiana against the Company and some 64 other defendants by a number of plaintiffs who had agreed with U.S. EPA to fund and perform remediation at the Ninth Avenue site in Gary, Indiana. In 1997, the

[4] Ecodyne was formerly affiliated with TransUnion. It currently is a Canada-based "member company" of Marmon. http://www.marmon.com/Companies.html

Company entered into a settlement agreement with the Ninth Avenue plaintiffs. Around the same time, The Marmon Group entered into a settlement with the Company by which Marmon indemnified the Company for the settlement funds and for its attorney fees.

Summary

Rochester Instrument's Liability

As discussed above, Rochester Instrument pervasively controlled the activities of Old American Name Plate. Old American Name Plate was grossly undercapitalized and its funds, assets and identities were commingled with those of Rochester Instrument. The two companies did not operate at arm's length; in fact, Rochester Instrument held Old American Name Plate out as one of its divisions, one of its "operating units," and part of the Rochester Instrument's I/D Group.

Old American Name Plate's officers and directors consisted entirely of Rochester Instrument employees. Rochester Instrument also filed joint financial statements and tax returns which consolidated Old American Name Plate's balance sheet data with that of Rochester Instrument. Although Rochester Instrument purported to be the sole shareholder of Old American Name Plate, no dividends were ever paid. Rochester Instrument routinely siphoned off both the interim and year-end profits of Old American Name Plate and forced extreme cost-cutting measures, even while causing Old American Name Plate's plant to operate in violation of EPA and OSHA regulations and putting the health of workers in jeopardy. Upon the facts present in this case, we believe a court would find Rochester Instrument, and not Old American Name Plate, to be the liable party.

Thus, under the legal principles set forth above, Rochester Instrument has liability for Old American Name Plate's alleged costs associated with the Site.

TransUnion

As discussed above, TransUnion acquired Rochester Instrument under a "pooling of interests" arrangement. This is the legal equivalent of a *de facto* merger, under which, pursuant to well-established legal principles, the acquiring company assumes all pre-existing liabilities, including but not limited to environmental liabilities. These include the alleged liability associated with the Lake Calumet Cluster Site.

Marmon

As discussed above, TransUnion merged with Marmon. Thus, Marmon acquired all of TransUnion's liabilities, which TransUnion had previously acquired from Rochester Instrument. These liabilities remain with Marmon today. *See, e.g., Maytag Corporation v. Navistar International Transportation Corp.,* 219 F.3d 587, 591 (7th Cir. 2000). These include the alleged liability associated with the Site.

Conclusion

For the foregoing reasons, the Company requests that U.S. EPA contact Robert W. Webb, Vice President and General Counsel, of The Marmon Group, 225 West Washington Street, Suite 1900, Chicago, Illinois 60606, with regard to Old American Name Plate's alleged environmental liability. Please be assured of the cooperation and assistance of the Company in this matter.

The Company further requests that U.S. EPA enter into a *de minimis* settlement with the Company as to any alleged disposal at the Lake Calumet Cluster Site after 1978. If you require any further information, please contact me.

Very truly yours,

/s/

Maureen Martin

cc: Mike Stevens
Jerome Maynard

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* To most locations.

4b Express Freight Service *Packages over 150 lbs.*

- [ ] FedEx 1Day Freight* — Next business day.** Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- [ ] FedEx 2Day Freight — Second business day.** Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- [ ] FedEx 3Day Freight — Third business day.** Saturday Delivery NOT available.

* Call for Confirmation: ____ ** To most locations.

5 Packaging

- [X] FedEx Envelope*
- [ ] FedEx Pak* — Includes FedEx Small Pak, FedEx Large Pak, and FedEx Sturdy Pak.
- [ ] FedEx Box
- [ ] FedEx Tube
- [ ] Other

* Declared value limit $500.

6 Special Handling Include FedEx address in Section 3.

- [ ] SATURDAY Delivery — Not available for FedEx Standard Overnight, FedEx First Overnight, FedEx Express Saver, or FedEx 3Day Freight.
- [ ] HOLD Weekday at FedEx Location — Not available for FedEx First Overnight.
- [ ] HOLD Saturday at FedEx Location — Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

Does this shipment contain dangerous goods? One box must be checked.

- [ ] No
- [ ] Yes — As per attached Shipper's Declaration.
- [ ] Yes — Shipper's Declaration not required.
- [ ] Dry Ice — Dry Ice, 9, UN 1845 ____ x ____ kg
- [ ] Cargo Aircraft Only

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging.

7 Payment Bill to: Enter FedEx Acct. No. or Credit Card No. below. Obtain Recip. Acct. No. [ ]

- [X] Sender — Acct. No. in Section 1 will be billed.
- [ ] Recipient
- [ ] Third Party
- [ ] Credit Card
- [ ] Cash/Check

Total Packages 1 Total Weight [redacted] Credit Card Auth.

†Our liability is limited to $100 unless you declare a higher value. See the current FedEx Service Guide for details.

8 Residential Delivery Signature Options If you require a signature, check Direct or Indirect.

- [ ] No Signature Required — Package may be left without obtaining a signature for delivery.
- [ ] Direct Signature — Someone at recipient's address may sign for delivery. *Fee applies.*
- [ ] Indirect Signature — If no one is available at recipient's address, someone at a neighboring address may sign for delivery. *Fee applies.*

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Peel and Stick Airbill or Pouch here

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